

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COMPUWARE CORPORATION,

Plaintiff,

Civil No. 03-70247
Hon. John Feikens

v.

MOODY'S INVESTORS SERVICES,
INC.,

Defendant.

OPINION AND ORDER

Defendant Moody's Investors Services (Moody's) moves for the enforcement of the June 10, 2004 order regarding discovery in this case, arguing that Plaintiff Compuware has failed to comply with this Court's production order in regard to Requests Four, Seven, Nine, and Ten. For the reasons below, I DENY in part and GRANT in part Defendant's motion.

FACTUAL BACKGROUND

Two of my previous opinions have discussed the facts of this case, and I will not restate them here. Compuware Corp. v. Moody's Investors Services, Inc., 222 F.R.D. 124 (E.D. Mich. June 10, 2004); Compuware Corp. v. Moody's Investors Services, Inc., 273 F.Supp.2d 914 (E.D. Mich. July 23, 2002). My June 10, 2004 Opinion and Order decided many of the discovery disputes between the parties, specifically ruling on the

discovery requests in dispute now. These requests largely deal with documents Compuware generated discussing its relationship with International Business Machines Corporation (IBM).

ANALYSIS

A. Request Four¹

Defendant Moody's has two requests with regard to Request Four: first, Moody's asks that I clarify my June 10, 2004 Opinion and Order to make it clear that even a document created after the date of the disputed rating, August 13, 2002, is relevant if it refers or relates to Plaintiff's relationship with IBM before that date. Second, Defendant Moody's asks that this Court order Compuware to separate the relevant from the non-relevant materials instead of forcing Moody's to sort through a catalog of "tens of millions" of documents.

First, to the extent that is necessary, I clarify that all documents referring or relating to the relationship between Plaintiff Compuware and IBM (including, but not limited to, the potential outcome of litigation between the two companies) before August 13, 2002 are relevant in this action, even if the documents were created after August 13, 2002.

However, with respect to the second request, Defendant Moody's request is

¹ Request Four reads: "All documents, including but not limited to internal memoranda, internal e-mails, and correspondence with [IBM] or any other entity or person, referring or relating to actual or potential effects on Compuware's business of any past, present, future, or contemplated conduct by IBM."

DENIED. Compuware has offered to provide Moody's a set of portable computer disks (at a cost of \$40,000) that contain all the documents that Compuware produced to IBM in its litigation with IBM. Compuware states that all the documents satisfying Request Four are found on these disks. Moody's argues that it should be Compuware's job to determine which of these documents are relevant to this case and produce only relevant documents. I am disappointed with the parties' inability to solve this dispute without this Court's assistance, since I think it highlights attempts by both sides to needlessly delay and complicate discovery.

Compuware originally claimed it could not turn over to Moody's the documents responsive to Request Four because protective orders in the Compuware v. IBM case before Judge Steeh prevented it from doing so. Pl's Br. in Response to Def.'s Mt. to Compel at 6; see also 222 F.R.D. 124 at 136. However, Compuware now offers to produce all the documents, although it has not sought a change in the protective order. Therefore, Compuware needlessly raised the issue of the protective order and thereby delayed its original production of many documents.

However, Defendant Moody's has also needlessly delayed the discovery process after my June 10, 2004 Opinion and Order by refusing to accept Compuware's offer of the computer disks. Defendant Moody's Document Request Number Eight requested from Compuware "[a]ll documents produced by Compuware to IBM in any litigation." Compuware is now offering to make that production, which it states includes the universe of documents that are responsive to Moody's Request Four.

Thus, Defendant is asking me to order Compuware to produce *fewer* documents in discovery than Defendant originally requested. For this reason, I believe it would not be in the interests of justice to issue such an order, and DENY Defendant's motion as to Request Four.

B. Requests Seven, Nine, and Ten

Moody's asks that this Court clarify its June 10, 2004 Opinion and Order and state that all documents created after August 13, 2002 discussing Compuware's relationship with IBM before that date are relevant, and order Compuware to turn those over. As discussed above, to the extent such a clarification is necessary, I make it now. I GRANT Defendant's motion as to these requests and order that all documents responsive to Requests Seven, Nine, and Ten that have not already been produced to Defendant Moody's and fit in this definition of relevance be produced immediately.

CONCLUSION

For the reasons above, Defendant Moody's motion is GRANTED in part and DENIED in part. All document production necessary to complete discovery on these document requests should occur immediately.

IT IS SO ORDERED.

John Feikens
United States District Judge

Date: _____